IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10888 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATRE ROAD TRANSPORT CORPN.

Versus

RANAJI CHAGANJI CHAUHAN

Appearance:

1. Special Civil Application No. 10888 of 2002

MR KS JHAVERI for Petitioner No. 1

MR RAMESH K SHAH for Respondent No. 1

RULE NOT RECD BACK for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 16/02/2004

ORAL JUDGEMENT

1. The present petition is filed by the Gujarat

State Road Transport Corporation [hereinafter referred to as the GSRTC] being aggrieved by the judgement and order dated 10th July 2001 passed by the Industrial Tribunal, Ahmedabad in Reference [I.T.] No. 310 of 1997.

2. The facts of the case are that the driver, respondent herein, had driven the bus in a negligent manner on the day of the accident, i.e. 2nd August 1994, whereby the bus 'plunged' in the floods causing heavy loss to the bus. The respondent was served with a charge sheet bearing No.166 of 1999 dated 1.6.1995 (a copy of which was produced before the Tribunal, being Exh.14), to which the respondent had filed a reply on 2.6.95. On completion of the departmental inquiry in which the respondent was found guilty in Default Case No.166 of 1995, show cause notice was issued to which the respondent filed his reply on 28th August 1995. The authorities then passed an order of punishment, by which the respondent was reduced to the initial stage of the pay scale of the driver, i.e. Rs.800/-.

2.1 The respondent challenged, the order of punishment by filing Departmental First Appeal No. 21600 of 1995 on 12th September 1995. The first appellate authority rejected the Appeal. Being aggrieved of that, the respondent preferred 2nd Appeal before the authorities. The second appellate authority also having found no substance rejected the same. Being aggrieved of that, the respondent approached the Industrial Tribunal by filing a Reference, which the Industrial Tribunal was pleased to allow by quashing the order of punishment and ordering payment of consequential benefits on quashing of the punishment order along with costs of Rs.500/_.

3. Learned advocate Ms. J.D. Jhaveri for Mr. K.S. Jhaveri for the petitioner GSRTC strenuously submitted that the learned Member of the Industrial Tribunal has committed a grave error in allowing the Reference of the respondent. She submitted that the facts are so eloquent that there was no other view possible than the one taken by the Inquiry Officer consequent upon which the Disciplinary Officer found it to be a fit case to impose punishment against which the departmental appeals were preferred, which were rejected by both the appellate authorities having found no substance.

4. Learned advocate for the petitioner submitted that when the river is flooded any reasonable, sensible man would not have dared to drive the bus to avoid the bus getting plunged in the flooded river, resulting into a loss of Rs.6 lakhs to the petitioner Corporation. The

learned advocate submitted that fortunately there was no passenger in the bus, otherwise, a grave tragedy would have taken place in such circumstance. The learned advocate also submitted that the respondent is a habitual negligent driver, which is clear from the Default Card which is produced at Annexure 'H' to the petition. She submitted that prior to the present incident, at least on three to four occasions, the respondent was found to have indulged in reckless and negligent driving causing damage of varying extent to the Corporation. She further submitted that this is a case where the Industrial Tribunal has committed an error by exercising discretionary power which is not available to the Industrial Tribunal. The learned advocate submitted that only in the matter of discharge or dismissal of a workman, the Labour Court, Industrial Tribunal or National Tribunal are conferred power to give appropriate relief. The learned advocate submitted that in the present case, the punishment being reducing at the initial stage of the pay scale of the driver, it is not a case which falls within the ambit of section 11A of the Industrial Disputes Act, 1947, in that view of the matter, the present petition is required to be allowed and the impugned order of the Industrial Tribunal is required to be quashed. The learned advocate further submitted that this is a case wherein at least four authorities have applied their mind, viz. the Inquiry Officer on appreciation of the rival contentions of the respondent-driver and the Presenting Officer had come to the conclusion that the driver is guilty; the said report of the Inquiry Officer was considered and appreciated by the disciplinary authority, who decided to impose the punishment of reducing the respondent's pay to the initial stage of the pay scale of the post of driver; the first appellate authority and the second appellate authority found no substance in the respective appeals preferred by the respondent-workman and therefore dismissed the same. Learned advocate for the petitioner submitted that the Industrial Tribunal ought to have considered all these facts/ aspects of the matter and should have restrained itself from allowing the workman's reference. The learned advocate further submitted that the contention which is raised is that the bus was old enough and had been on the road for 743000 kms. and, therefore, it was a scrapped bus, is nothing but a contention which is totally devoid of merit. Even if the bus was on the road for such a long time, it was in active service and it was not declared to be 'not road-worthy'. Besides, because the bus was old, it cannot be said that the bus was not in a working condition. In fact, the respondent driver has given a

statement on the day of the incident that as usual he was trying to reverse the bus and there being a slope and the brakes having failed, the bus slipped into the flooded river. It is also recorded by the Inquiry Officer that if the driver had taken the services of the conductor, the accident could have been avoided. The say of the respondent driver that the services of the conductor was taken is not borne out from the record of the case inasmuch as when the bus slipped into the flooded river, it was only the driver who was in the bus and had to come out of the bus by breaking open the glass. It is only after the incident that the conductor tried to help the driver by giving a statement to the effect that he had got down from the bus when the bus started slipping into towards the flooded river and the driver had to come out by breaking open the glass.

5. From the facts of the case, it is clear that any person with a minimum much less reasonable prudence would not have dared to act like the respondent driver did. It is clear from the record that the respondent driver was not only negligent but also rash and careless beyond any expected standards, otherwise he would not have driven the bus in the manner alleged. An extensive damage is caused to the bus which slipped into the flooded river. The Industrial Tribunal has not given any cogent reasons for which it has disagreed with the findings of the Inquiry Officer, the view taken by the Disciplinary Authority and the ground on which the two appellate authorities decided to reject the appeals of the respondent driver. Only because it is an Industrial Tribunal and the Reference is made by a workman, does not warranted the same to be allowed. The Industrial Tribunal has to exercise the powers vested in it in accordance with law.

6. It is required to be noted that section 11.A of the ID Act empowers the Industrial Tribunal to give appropriate relief only in case/s of discharge or dismissal of workman. Interference in every case is not warranted from the Industrial Tribunal in the cases of other punishments. The impugned judgment and order of the Industrial Tribunal is, therefore, required to be quashed and set aside, and it is accordingly quashed and set aside. Rule is made absolute with no order as to costs.

[RAVI R. TRIPATHI, J.]

mathew/
karim